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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JAMES J. HENDRIX,

14 Defendant.

CASE NO. CR19-0024JLR

ORDER GRANTING IN PART
MOTION TO STAY

15 Before the court is Defendant James J. Hendrix's unopposed motion to stay. (Mot.
16 (Dkt. # 238).) The court has considered the motion, Mr. Hendrix's submission
17 concerning the motion, the relevant portions of the record, and the applicable law. Being
18 fully advised, the court GRANTS in part and DEFERS ruling on in part Mr. Hendrix's
19 motion to stay.

20 On December 23, 2019, a jury found Mr. Hendrix guilty of felon in possession of
21 firearms and ammunition, as charged in Count 1 of the indictment; the lesser included
22 offense of possession of controlled substances, as charged in Count 3 of the indictment;

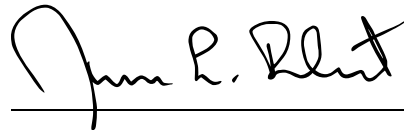
1 felon in possession of a firearm, as charged in Count 5 of the indictment; and the lesser
2 included offense of possession of controlled substances, as charged in Count 6 of the
3 indictment. (*See* Jury Verdict (Dkt. # 200).) On January 28, 2020, the court denied Mr.
4 Hendrix's motion to dismiss the charge of possession of methamphetamine with intent to
5 distribute, as charged in Count 2; the greater offense of possession of methamphetamine
6 and heroine with intent to distribute, as charged in Count 3; the charge of possession of
7 firearms in furtherance of a drug trafficking offense, as charged in Count 4; the greater
8 offense of possession of methamphetamine with intent to distribute, as charged in Count
9 6; and the charge of possession of a firearm in furtherance of a drug trafficking crime, as
10 charged in Count 7. (*See* 1/28/20 Order (Dkt. # 240).) The court concluded that the
11 Government could retry those specific counts. (*See id.* at 35-38.)

12 On January 28, 2020, Mr. Hendrix filed a notice of interlocutory appeal
13 challenging the court's order denying Mr. Hendrix's motion to dismiss. (*See* Not. of
14 Appeal (Dkt. # 241).) Mr. Hendrix's interlocutory appeal of the court's Double Jeopardy
15 ruling divests the court of jurisdiction on the counts that Mr. Hendrix appealed. *See*
16 *United States v. Claiborne*, 727 F.2d 842, 850 (9th Cir. 1984) ("Ordinarily, if a
17 defendant's interlocutory claim is considered immediately appealable under *Abney* [*v.*
18 *United States*, 431 U.S. 651 (1977)], the district court loses its power to proceed from the
19 time the defendant files its notice of appeal until the appeal is resolved."). Accordingly,
20 the court GRANTS in part Mr. Hendrix's motion to stay retrial on Count 2, the greater
21 offense in Count 3, Count 4, the greater offense in Count 6, and Count 7. The court
22 instructs the Clerk to STRIKE the February 3, 2020, trial date in this matter.

1 The court DEFERS ruling on Mr. Hendrix's request to stay sentencing on Count 1,
2 the lesser included offense in Count 3, Count 5, and the lesser included offense in Count
3 6. (*See* Mot. at 3.) Mr. Hendrix has not appealed his convictions on those specific
4 counts. (*See* Not. of Appearance.) His motion to stay does not argue that the court is
5 divested of jurisdiction to sentence Mr. Hendrix for convictions that have not been
6 appealed, and he provides only a cursory explanation as to why "[s]entencing should be
7 delayed until Mr. Hendrix's appeal is resolved and, if the Ninth Circuit upholds the
8 Court's order regarding retrial, until retrial is completed." (*See* Mot. at 3.)

9 The court concludes that further briefing from the parties on this issue would be
10 beneficial. Accordingly, the court DIRECTS Mr. Hendrix and the Government to file
11 responses to this order on the question of whether the court should grant Mr. Hendrix's
12 motion to stay sentencing on Count 1, the lesser included offense in Count 3, Count 5,
13 and the lesser included offense in Count 6 by **Friday, February 7, 2020, at 12:00 p.m.**
14 The parties' responses shall be limited to six pages. There shall be no replies unless
15 otherwise ordered by the court.

16 Dated this 28th day of January, 2020.

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19 JAMES L. ROBART
20 United States District Judge
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